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10 ISRAEL DUARTE-ROSAS

FILED
DISTRICT COURT OF GUAM

JUL 22 2008

JEANNE G. QUINATA
Clerk of Court

11 **IN THE DISTRICT COURT OF GUAM**

12 **UNITED STATES OF AMERICA**

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 vs.

16 ISRAEL DUARTE-ROSAS,

17 Defendant.

Civil Case No. CIV04-00021
Criminal Case No. CR98-00219

**DEFENDANT'S MOTION FOR
RECONSIDERATION OF
DECISION ON PETITIONER'S 28
USC §2255 MOTION with
MEMORANDUM OF POINTS AND
AUTHORITIES**

18 * * * **MOTION TO DISMISS WITH PREJUDICE** * * *

19 COMES NOW the Defendant ISRAEL DUARTE-ROSAS (hereinafter
20 referred to as "Defendant"), by, through and with Defendant's court appointed
21 counsel of record, **THE VANDEVELD LAW OFFICES, P.C.**, by Mr. Curtis C. Van
22 de veld, Esq., to move the court to reconsider the decision and order of the court
23
24

25 UNITED STATES OF AMERICA v. ISRAEL DUARTE-ROSAS, Defendant
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1 issued on July 9, 2008 for the reasons more fully set forth hereinafter in the
2 memorandum of points and authorities that follows this motion.

3 * * * **MEMORANDUM OF POINTS AND AUTHORITIES** * * *
4

5 **1. Basis for reconsideration.**

6 This motion for reconsideration is made pursuant to FRCP Rules 59 as the
7 decision of the court is manifestly unjust for the reasons set forth hereinafter and
8 the failure to raise the matters asserted herein, if any, is a matter of excusable
9 neglect and 60(b)(1) and (6).
10

11 **STATEMENT OF RELEVANT FACTS**

12 Defendant accepts the facts and background of the case as described in the
13 Order in the portion thereof under the heading "Background" subject to the
14 additional following facts.
15

- 16 1. The Defendant's Plea Agreement, accepted by the court provided
17 that any information provided by Defendant in his cooperation
18 would not be used against him. See, Plea Agreement District Court
19 sequence number 8-1, filed on 09-24-98, paragraphs 2, and 7(b).
20
21 2. There clearly was not any meeting of the minds as to the court's
22 construction of the words "and elsewhere" as used in the Plea
23 Agreement and at time of the making of the guilty plea.
24

25

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- 1 3. The court in fashioning its decision relied on facts outside those
2 presented by the parties, derived from the Presentence Report and
3 without an opportunity for Defendant to present countervailing
4 facts, and argument.
5
6 4. The court wholly ignored the facts that the parties agreed upon set
7 forth in the response to the original motion at Exhibit D, page 2
8 thereof and recited by Defendant in his reply at page 2, thereof, the
9 facts being, "5. Duarte knows of several drug dealers however they
10 are all in California and he is unable to make any deals with them
11 while in Guam because most of the individuals that he has
12 knowledge of and is able to make contact with for drug deals. He is
13 unable to makes (sic) contact with them by paging them first and
14 when they call him back that is when he is able to negotiate a deal."

15
16
17 **ARGUMENT**
18

- 19 1. THE COURT RELIED ON FIVE FACTS THAT CAME TO
20 LIGHT AFTER THE ENTRY OF THE DEFENDANT'S PLEA,
21 THE CONSIDERATION OF WHICH VIOLATES THE
22 DEFENDANT'S PLEA AGREEMENT AND RIGHT TO DUE
23 PROCESS TO RESPOND TO THESE FACTS NOT RAISED BY
24 EITHER PARTY AT THE EVIDENTIARY HEARING.

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MOTION FOR RECONSIDERATION . . .

1 Defendant contends that the Plea Agreement provides Defendant
2 protection that anything Defendant provided to law enforcement authorities after
3 entry of Defendant's plea pursuant to the agreement would not be used against
4 Defendant. The court's construction that it is free to consider facts not known to
5 the government before the taking of the plea violates Defendant's Plea
6 Agreement and is manifestly unjust. The court, like the government, is bound to
7 the Plea Agreement. U.S. v. Barron, 172 F.3d 1153 (9th Cir. 1998).
8
9

10 The court further ignores the facts undisputed between the parties that
11 Defendant only knew drug dealers in California to reach its decision. The court
12 assumes five facts from the Presentence Report that have no bearing on the issue
13 of the source of the Heroin to the Defendant. The facts raised by the court were
14 not raised by either party in either their pleadings or at the time of the
15 evidentiary hearing. Defendant was not provided an opportunity to address those
16 facts or object to the relevancy of the facts as the court appears to have sua
17 sponte searched the records to find support for the decision after the parties were
18 last heard. The fundamental fairness of due process is the right to be heard at a
19 meaningful time and in a meaningful manner. Matthews v. Eldridge, 424 U.S.
20 319 (1976). Without an opportunity to address the matters sua sponte considered
21 by the court Defendant has been denied due process.
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1 A matter further absolutely clear from the record is that Defendant did not
2 know what the terms "and elsewhere" meant in entering his plea to the court.
3 The facts provided only relate to the source of the poppies from which the
4 Heroin was manufactured, but nothing was provided that the Defendant knew
5 the matters about the source of the poppies or had involvement in bringing it or
6 its byproduct – Heroin into the United States. The only evidence is that
7 Defendant had involvement with persons in California.
8

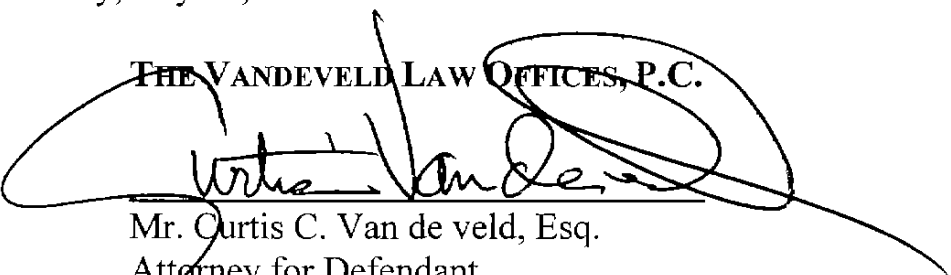
9
10 Without showing that Defendant knew that the Heroin originated from
11 Mexico or was involved in its transportation, the court's decision is manifest
12 error and contrary to the weight of the evidence produced by the parties, i.e., that
13 Defendant only knew drug dealers in California.
14

15 **CONCLUSION**

16 The court should reconsider the earlier decision in light of the arguments
17 raised herein and dismiss and vacate Defendant's conviction.

18 DATED: Tuesday, July 22, 2008.

19 **THE VANDEVELD LAW OFFICES, P.C.**

20 
21 Mr. Curtis C. Van de veld, Esq.

22 Attorney for Defendant

23 **ISRAEL DUARTE-ROSAS**
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25 UNITED STATES OF AMERICA v. ISRAEL DUARTE-ROSAS, Defendant
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CERTIFICATE OF SERVICE

I, Curtis C. Van de veld, Esq., hereby certify that I caused a copy of
the foregoing document here filed, to be served on counsel for Plaintiff
UNITED STATES OF AMERICA on November 20th, 2007 via hand delivery
at the following address:

Ms. Marivic P. David, Esq.
Assistant U.S. Attorney
U.S. Attorney's Office
District Of Guam
Criminal Division
6th Floor, Sirena Plaza
108 Hernan Cortes Avenue
Hagåtña, Guam 96910

DATED: Tuesday, July 22, 2008.

THE VANDEVELD LAW OFFICES, P.C.



Mr. Curtis C. Van de veld, Esq.
Attorney for Defendant
ISRAEL DUARTE-ROSAS

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